

TITLE LEGAL ASPECTS IN APPROACHING THE NATIONAL MOBILIZATION SYSTEM FROM THE ADMINISTRATIVE PERSPECTIVE

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Abstract: *The state of mobilization represents the totality of extraordinary measures determined by intrinsic and extrinsic factors, and may be declared simultaneously with the establishment of the state of siege or the declaration of the state of war. According to the regulations in force, upon the appearance or imminence of a serious threat that may affect the sovereignty, independence and unity of the state, the territorial integrity of the country and constitutional democracy, measures can be instituted that target the political, economic, social, administrative, diplomatic, legal and military fields. The complexity of the mobilization is supported by the existence of a national system of mobilization that includes management and execution structures that have attributions in the field of mobilization, structures that benefit from the resources, infrastructure and related relations, allocated according to the law. The resizing of the public administration during the state of demobilization does not only take into account the structural component - the authorities and public institutions with the role of leading and executing the national mobilization system - but also the functional component that calls on the human, material and financial resources that are secured and used in the provided situations.*

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1. Conceptual Determinations of the State of Mobilization

The sustenance of the state entity is based on a set of core values, without which the very existence of the state would be seriously jeopardised. The sovereignty, independence and unity of the state, the territorial integrity of the country or constitutional democracy, as laid down in the fundamental law, are not just theoretical concepts to which time has conferred axiomatic power, but the intrinsic nature of each state. As such, any threat that endangers these values should generate an appropriate institutional response. Every state has an established institutional mechanism and legislation adapted to deal with such threats, but the effectiveness of

the measures taken in this regard is rarely tested in real conditions, because the organisation and functioning of a system to provide the appropriate response in crisis situations is done in peacetime, under the presumption that when the threat of equilibrium occurs, there will also be the appropriate response.

The degree of threat to the state is of major importance in the adoption of the necessary categories of measures, which under national law are *exceptional measures* and *extraordinary measures*. The first category includes a state of emergency and a state of alert, while the second category includes a state of mobilisation and a state of war.

According to *Law no 355/2009* on the regime of partial or total mobilization of the

armed forces and state of war, the state of mobilization is “the totality of extraordinary measures that may be instituted, mainly in the political, economic, social, administrative, diplomatic, legal and military fields, planned and prepared in peacetime, as well as the actions carried out for their application, according to the law, in the event of the appearance or imminence of a serious threat that may affect the sovereignty, independence and unity of the state, the territorial integrity of the country and constitutional democracy” [1].

By comparison, extraordinary measures are also found in the other state regulated by *Law no 355/2009*, namely the state of war. With reference to this state, it can be pointed out that the notion of war has multiple meanings and the concept has undergone significant changes over time depending on the particularities imposed by political, military, social, economic and other factors, the process being based on a complex causality [2].

By the consequences it produces, being the most serious of the states analysed, a state of war represents “the totality of extraordinary measures which may be instituted, mainly in the political, economic, social, administrative, diplomatic, legal and military fields, in order to exercise the inherent right of the State to individual or collective self-defence” [3].

It should be emphasised that the state of mobilisation has an existence of its own, determined by intrinsic and extrinsic factors, and may be declared, depending on the evolution of the situation, at the same time or not, as the establishment of a state of siege or the declaration of a state of war. Moreover, the state of mobilisation may be adapted according to the nature and extent of the threat, so that it may be partial when the measures and actions are applied successively and limited to the level of one or more administrative-territorial units, or to the level of certain components of the forces intended for defence.

2. Legal Responsibility for Declaring a State of Mobilisation and a State of War

The representative constitutional authorities of the state - the legislature and the head of state - are vested with the power to declare a state of mobilisation or a state of war. By comparison, in the case of states involving exceptional measures, a state of emergency and a state of siege, the President institutes and Parliament is responsible for approving the measures. In the case of extraordinary states, however, the role of the legislature becomes more important, as its prerogatives are broader than those of the Head of State. Parliament can thus declare a state of mobilisation or a state of war without the President's approval, although the President, as commander of the armed forces and President of the National Defence Council, will be informed of Parliament's decision. Instead, the President can only declare a state of mobilisation, in which case the President's decree needs Parliament's approval. As a peculiarity reflecting the semi-presidential political regime of the Romanian state, the President of Romania cannot declare a state of war. Specifically, *Law no 355/2009* on the regime of partial or total mobilisation of the armed forces and the state of war provides that Parliament, sitting in joint session, declares by decree a state of partial or total mobilisation, demobilisation and state of war. Parliament's decisions are legal acts of the legislative authority, along with laws and motions [4].

Although it has less legal force than the law due to its content and drafting procedure, the legislator designates the Parliament's decision as the legal act regulating one of the most important decisions in the country's foreign and domestic policy: the state of war. This preference is explained by the fact that the law as a legal act of the Parliament has a long procedure of elaboration and adoption, which includes: the legislative initiative, the debates and adoption of the law in the two chambers of the legislature, then the promulgation of the

law by the President of Romania, and finally the entry into force 3 days after the date of publication in the Official Gazette of Romania. Instead, the declaration of a state of war requires a much more flexible legal instrument, which allows the rapid implementation of the Parliament's decision, and the decision meets the necessary conditions.

The declaration of a state of total or partial mobilization, as well as demobilization by the President of Romania is made by decree which is countersigned by the Prime Minister, the latter as head of the Government being able to order the application without delay of the measures concerning the executive and the specialized central public administration. In view of the consequences of the decision, in order to avoid possible discretionary or arbitrary acts by the Head of State, the President's decree is submitted to Parliament for approval, as a rule, before it enters into force. The Presidential Decree may also be submitted for approval at a later date, but only in exceptional cases and within 5 days of adoption at the latest [5].

Both the Romanian Constitution and Law no 355/2009 on the regime of partial or total mobilization of the armed forces and state of war do not regulate the prerogative of the President of Romania to declare a state of war, so that the Romanian Parliament has the exclusive right to declare a state of war.

3. Administrative Specifics of the Organisation and Functioning of the National Mobilisation System

The implementation of measures of an extraordinary nature in the political, economic, social, administrative, diplomatic, legal and military fields has a longer time horizon which, in order to be effective, requires planning and preparation of these measures during peacetime. The complexity of mobilisation is underpinned by the existence of a national mobilisation system comprising “management and

executive structures, with the associated resources, infrastructure and relationships, which are responsible for mobilisation” [6]. The management of the national mobilisation system has similarities with the management of the national defence system provided for by Law no 45/1994 on national defence and is an attribute of the constitutional authorities: The Romanian Parliament, the President of Romania, the Supreme Council of National Defence, the Government of Romania and other public authorities with statutory powers in the field of defence and national security.

Law no 355/2009 on the regime of partial or total mobilisation of the armed forces and state of war does not regulate all the powers of these authorities, but only those relevant to the field of extraordinary measures, the text of being supplemented by the provisions of the Romanian Constitution and other laws in the field of defence and national security.

Thus, the President of Romania is obliged to inform the Parliament about the measures he orders in his capacity as Commander of the Armed Forces. In this regard, it is also worth recalling the provisions of Article 92 of the Romanian Constitution, which stipulates that “in the event of armed aggression against the country, the President of Romania shall take measures to repel the aggression and shall inform Parliament without delay, by means of a message” [7].

An important role is assigned to the Ministry of National Defence, a specialised central public administration authority, subordinated to the Government, which carries out the unified coordination of planning and evaluation of the preparation for mobilisation of defence forces, mainly through the Defence Staff.

The mobilisation of defence forces is conducted by the institutions responsible for this area, for the structures they are subordinate to or coordinate with. Within the defence forces, the Chief of Defence Staff is responsible for the management of

the mobilisation of the armed forces and it is carried out at strategic level by the Mobilisation Command Centre.

At the execution level, the national mobilisation system, during a state of mobilisation or a state of war, is made up of defence forces, public authorities, deconcentrated public services and established economic operators, plus the resources, infrastructure and relations associated with them.

In order to carry out the duties provided for by law during a state of mobilisation and a state of war, the competent authorities may issue military ordinances, which have a content and a binding legal regime similar to those provided for military ordinances issued during a state of emergency or a state of siege. Such military ordinances may be issued by the Minister of National Defence and the Chief of Defence Staff, when a state of mobilisation or a state of war is declared throughout the territory of the State; by military commanders appointed in each county by the Supreme Council of National Defence, when a state of mobilisation or a state of war is declared at county level; by garrison commanders, when a state of mobilisation or a state of war is declared for an area in which a military garrison may be competent.

In principle, the issuance of military ordinances does not obstruct the issuance of other regulatory acts by public authorities, as long as the powers of these authorities have not been transferred to the public authorities actually managing the measures imposed by decree [8]. Although since the period between the two world wars military ordinances have received the status of command acts of a military nature, [9] in the light of the current regulations they cannot be included in this category and, as such, military ordinances may be subject to review through administrative litigation.

According to the legal definition, the act of command with military character is “the administrative act relating to strictly military matters of activity within the

armed forces, specific to military organization, which implies the right of commanders to give orders to subordinates in matters relating to the leadership of the troops, in time of peace or war or, as the case may be, in the performance of military service” [10]. Compared to military acts of command, military ordinances have a much wider scope of application, both in terms of the situations they cover and in terms of the number of public authorities that can issue and apply them. Military ordinances are subject to review of administrative acts by the administrative courts.

From the point of view of the organisation and functioning of administrative structures, the law provides for the transfer of powers between the specialised central public administration authorities or autonomous local public administration authorities and the military authorities provided for in the act declaring a state of mobilisation or a state of war. Powers not transferred to the military authorities continue to be exercised by the civilian public administration authorities, subject to compliance with the regulations contained in the military ordinances. In addition, Law no 355/2009 provides for separate powers of these authorities during the state of mobilisation or state of war they are concerned with.

The resizing of the public administration during a state of demobilisation and a state of war does not only take into account the structural component - the public authorities and institutions with the role of managing and executing the national mobilisation system - but also the human, material and financial resources that are provided and used in the situation provided for by the regulations in force. The complex role that the military administration assumes both in peacetime and in crisis or war situations creates a specific system of relations between public administration structures and the resources available to the state.

The use of human resources in extraordinary circumstances of mobilization and war is not possible without prior planning for their provision, achieved in this regard by applying the provisions of Law no. 446/2006 on the preparation of the population for defence, which regulates the mobilization reserve as a category of human resources that can be used for training and for carrying out missions during exceptional and extraordinary states, consisting of the operational reserve and the general reserve [11].

Public institutions and economic operators are obliged to provide the material resources and services necessary to support the defence effort on the basis of state orders issued by the institutions responsible for the administration of funds from the state budget for war, through the application of the Plan for Mobilization of the National Economy for Defence, which is “the set of measures and actions concerning the transition of the economy from a state of peace to a state of war and its functioning in order to provide the resources necessary to support the defence effort” [12]. Meeting defence needs from the perspective of national economic preparedness is a complex process, both in terms of objectives and content and in terms of methods of delivery [13].

The material resources needed to mobilise forces for defence are made up of the following elements: own reserves, defence capabilities, mobilisation reserves, current production of economic operators and also imports.

The necessary level of operationalisation of the forces intended for defence shall be achieved by supplementing them with human resources in accordance with the states of organisation for war and their training, and by using material resources to ensure that they are properly equipped for war.

During the state of mobilisation and the state of war, “the planning, preparation and execution of activities are regulated by orders of the heads of the institutions responsible for mobilisation and war” [14], which are coordinated by the Supreme Council of National Defence.

From a legal point of view, demobilization is a symmetrical procedure compared to mobilization, its declaration being declared by the constitutional authorities that have the powers to declare mobilization: the Parliament of Romania and the President of Romania, and the specific activities and measures involve public administration structures and ensure both the appropriate return to a state of peace and the preparation of the national mobilisation system for a future response.

4. Conclusions

The analysis of contemporary armed conflicts constantly highlights the importance of the factor represented by the state public administration, both in the decision making underlying the institution of exceptional or extraordinary measures and in the actual implementation of these measures.

The institutional actors involved have, in most cases, administrative powers and competences which give these authorities, both in peacetime and in emergency or war situations, a prominent role in the adoption and execution of the decision. In this respect, the adoption of regulations and the implementation of public policies in peacetime can be a prerequisite for a successful administrative system to solve problems arising in crisis situations. In the context of the regional geopolitical crisis in which the Romanian state is involved, ensuring the functionality of the national mobilization system through appropriate administrative measures is a primary necessity.

References List

- [1] Law no. 355/2009 on state of partial or total mobilization of armed forces and state of war, Official Journal of Romania, Part I, no. 805 of 25.11.2009, art. 1.
- [2] C. D. Munteanu, Rolul administrației publice privind apărarea națională, în timp de pace, la mobilizare și pe timp de război, în E. Bălan, C. Iftene, M. Văcărelu, Administrația publică în situații de criză. București: Wolters Kluwer, 2015. p.102.
- [3] Law no. 355/2009 on state of partial or total mobilization of armed forces and state of war, Official Journal of Romania, Part I, no. 805 of 25.11.2009, art. 2.
- [4] Constitution of Romania, 1991, amended and completed by Law for the revision of the Constitution of Romania no. 429/2003, Official Journal of Romania, Part I, no. 758 of 29.10. 2003, art. 67.
- [5] Law no. 355/2009 on state of partial or total mobilization of armed forces and state of war, Official Journal of Romania, Part I, no. 805 of 25.11. 2009, art. 7.
- [6] Ibidem, art. 11.
- [7] Constitution of Romania, 1991, amended and completed by Law for the revision of the Constitution of Romania no. 429/2003, Official Journal of Romania, Part I, no. 758 of 29.10. 2003, art. 92 alin. (2).
- [8] B. Coraci, Ordonanțele militare. Limite, natură juridică și contestare, 17.04.2020, available from: <https://www.juridice.ro/680249/ordonantele-militare-limite-natura-juridica-si-contestare.html>.
- [9] F.Șerban, Starea de asediu. Starea de urgență. București: Editura Militară; 2005. p. 112.
- [10] Law no. 554/2004 on administrative litigation, Official Journal of Romania, Part I, no. 1154/07.12.2004, art. 2 alin. (1) lit. l).
- [11] Law no. 446/2006 on preparation of the population for defense, Official Journal of Romania, Part I, no. 990/12.12.2006, art. 15 alin. (1).
- [12] Law no. 477/2003 on preparation of the national economy and the defense territory, Official Journal of Romania, Part I, no. 201/21.03.2014, art. 10 alin. (2).
- [13] G. Mănescu, Pregătirea economiei naționale și a teritoriului pentru apărare. Concepte fundamentale, Sibiu: Editura Academiei Forțelor Terestre „Nicolae Bălcescu”; 2023. p. 71.
- [14] Law no. 477/2003 on preparation of the national economy and the defense territory, Official Journal of Romania, Part I, no. 201/21.03.2014, art. 27, alin. (1).